H.122

Introduced by Representative Masland of Thetford

Referred to Committee on

Date:

Subject: Taxation; sales and use tax; rate of tax; services

Statement of purpose: This bill proposes to implement the recommendations of Vermont's Blue Ribbon Tax Structure Commission related to the sales and use tax by reducing the sales and use tax rate to 4.5 percent, extending the sales and use tax to consumer services sold at retail, extending the sales tax to soft drinks, and eliminating consumer sales tax exemptions with the exception of food, prescription drugs, certain health care services, and certain education services.

An act relating to implementing the recommendations of Vermont's Blue Ribbon Tax Structure Commission to expand the base for sales and use taxes, and lower the sales and use tax rates

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 32 V.S.A. § 9701 is amended to read:

§ 9701. DEFINITIONS

Unless the context in which they occur requires otherwise, the following terms when used in this chapter mean:

* * *

(12)(A) ~~"Casual sale":~~"Casual sale" means an isolated or occasional sale of an item of tangible personal property or a service by a person who is not regularly engaged in the business of making sales of that general type of property or service at retail where the property or service was obtained by the person making the sale, through purchase or otherwise, for his or her own use.

* * *

(13) ~~Use:~~ "Use" means the exercise of any right or power over tangible personal property by the purchaser thereof and includes, but is not limited to, the receiving, storage or any keeping or retention for any length of time, withdrawal from storage, any installation, any affixation to real or personal property, or any consumption of that property. "Use" also means deriving a benefit, either directly or indirectly, of any service paid for by the consumer.

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(15) ~~Property~~ "Property and services the use of which is subject to ~~tax:~~ tax" means ~~include all~~ any property or service sold to a person within the state, ~~whether or not the sale is made within the state,~~ and any property or service the use of which ~~property~~ is subject to tax under section 9773 of this title or will become subject to tax when ~~such~~ the property or benefit of the service is received by or comes into the possession or control of such person within the state.

* * *

(48) "Consumer" means an individual who purchases or otherwise obtains tangible property or services for consumption by himself or herself, or for his or her direct or indirect benefit. "Consumer" does not include any legally recognized business or organizational entity, such as a sole proprietorship, partnership, corporation, nonprofit, association, estate, trustee, or receiver.

(49) "Service" means all activities engaged in for other persons for a fee, retainer, commission, or other monetary charge, which activities involve predominantly the performance of a service as distinguished from selling property. In determining what is a service, the intended use, principal objective, or ultimate objective of the contracting parties shall not be controlling. For the purposes of this chapter, services rendered by an employee for his or her employer are not taxable.

(50) "Dietary supplement" means any product, other than "tobacco," intended to supplement the diet that:

(A) contains one or more of the following dietary ingredients:

(i) a vitamin;

(ii) a mineral;

(iii) an herb or other botanical;

(iv) an amino acid;

(v) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) a concentrate, metabolite, constituent, extract, or combination of any ingredients described in this subdivision (50); and

(B) is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required pursuant to 21 C.F.R. § 101.36.

(51) "Health care services" means professional services that are delivered by licensed health care professionals such as physicians, registered nurses, and therapists, or by personal care aides under the supervision of health care professionals, for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

(52) "Educational services" means services provided by an "educational institution" as the term is defined at 16 V.S.A. § 140a(1), or an employee, contractor, or agent of an "educational institution," as that term is defined at 16 V.S.A. § 140a(1).

(53) "Soft drink" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" do not include beverages that contain milk or

milk products, soy, rice, or similar milk substitutes, or greater than 50 percent of vegetable or fruit juice by volume.

Sec. 2. 32 V.S.A. § 9703(c) is amended to read:

(c) Such person shall have the same rights in collecting the tax from his or her purchaser or regarding nonpayment of the tax by the purchaser as if the tax were a part of the purchase price of the property, service, telecommunications service, or amusement charge, as the case may be, and payable at the same time; provided, however, if the person required to collect the tax has failed to remit any portion of the tax to the commissioner, that the commissioner shall be notified of any action or proceeding brought by such person to collect the tax and shall have the right to intervene in such action or proceeding.

Sec. 3. 32 V.S.A. § 9704 is amended to read:

§ 9704. PRINCIPAL AND AGENT; JOINT AND SEVERAL LIABILITY

When in the opinion of the commissioner it is necessary for the efficient administration of this chapter to treat any salesman, representative, peddler, or canvasser as the agent of the vendor, distributor, supervisor, or employer under whom he or she operates or from whom he or she obtains tangible personal property or services sold by him or her or for whom he or she solicits business, the commissioner may, in his or her discretion, treat such agent as the vendor jointly and severally responsible with the principal, distributor, supervisor or employer for the collection and payment of the tax.

Sec. 4. 32 V.S.A. § 9707(b) is amended to read:

(b) No later than one business day prior to an event at which taxable sales will be made by vendors who have no permanent place of business in the state, the promoter of the event shall provide to the commissioner a list of vendors who are authorized by the promoter to sell taxable property or services at the event and the vendors' current sales tax license numbers. No later than one week after the event the promoter shall notify the department in writing of any changes to the list of participating vendors and their sales tax license numbers. In this subsection, "event" means a specific time and location at which 25 or more vendors are authorized by the promoter to sell taxable items.

Sec. 5. 32 V.S.A. § 9741 is amended to read:

§ 9741. SALES NOT COVERED

Retail sales and use of the following shall be exempt from the tax on retail sales imposed under section 9771 of this title and the use tax imposed under section 9773 of this title.

* * *

(2) Drugs intended for human use, durable medical equipment, mobility enhancing equipment, and prosthetic devices and supplies, including blood, blood plasma, insulin, and medical oxygen, used in treatment intended to alleviate human suffering or to correct, in whole or in part, human physical

disabilities. For a sale to be exempt under this section, the drug, piece of equipment, device, or supply item must be medically prescribed.

* * *

(13) Sales of food, food stamps, purchases made with food stamps, food products, and beverages sold for human consumption off the premises where sold, but not including soft drinks or dietary supplements.

* * *

(15) ~~Sales of newspapers and sales of tangible personal property which becomes an ingredient or component part of or is consumed or destroyed, or loses its identity in the manufacture of newspapers, whether sold or distributed without charge. A publication shall not be considered a newspaper unless, on an average for the taxable year, at least ten percent of its printed material consists of news of general or community interest, community notices, editorial comment, or articles by different authors.~~

* * *

(19) ~~Rentals of coin-operated washing facilities for individual, or personal use, including car washes and laundries.~~

(20) ~~Fees and charges for admission to nonprofit museums.~~

* * *

(22) ~~Funeral charges, including sales of tangible personal property such as caskets, vaults, boxes, clothing, crematory urns, and other such funeral~~

~~furnishings as are necessary incidents of the funeral, but excluding the sale of flowers and other items sold as an accommodation rather than as an integral part of the funeral service or preparation therefor.~~

* * *

(26) ~~Sales of electricity, oil, gas and other fuels used in a residence for all domestic use including heating. The commissioner shall by rule determine that portion of the sales attributable to domestic use where fuels are used for purposes in addition to domestic use.~~

* * *

(32) ~~Forty percent of the receipts from sales of mobile homes, as defined in section 2601 of Title 9 and modular housing, when they are sold as tangible personal property.~~

(33) ~~Sales of the flag of the United States to and by veterans' organizations exempt under Section 501(c)(19) of the Internal Revenue Code.~~

* * *

(35) ~~Charges made when tangible property is transferred as part of a personal services transaction or a transfer of intangible property rights, as long as the focus of the transaction is the provision of services or the transfer of intangible property rights and not the transfer of tangible personal property; no separate charge is made for the transfer of tangible personal property; and the value of the tangible personal property transferred, including the value of~~

~~services added to the tangible personal property transferred, is less than 10 percent of the total charge for the transaction. When the focus of the transaction is the transfer of tangible personal property, all receipts from the sale are taxable, including receipts from separately stated charges for services to produce the property, unless the receipts are otherwise exempt under this chapter.~~

* * *

(37) ~~Charges for documents, the sole purpose of which is to record or memorialize professional services rendered, such as, but not limited to, charges for briefs, memoranda, agreements, and wills prepared by lawyers; charges for tax returns and reports produced by accountants; charges for drawings produced by architects; or charges for insurance policies.~~

(38) ~~Tax on the sale or use of a tracked vehicle shall not exceed $1,100.00 adjusted as follows: As of July 1 of each even-numbered year, the commissioner shall adjust the most recent unrounded cap amount by the cumulative inflation index for the prior two calendar years under the consumer price index for urban consumer all items, and round that amount to the nearest ten dollars, and shall publish this rounded amount as the new cap.~~

* * *

(43) ~~Sales of scrap materials generated in the course of construction or demolition and diverted from waste disposal at the construction or demolition~~

~~job site; provided that the sale is not by the generator and is by a person who received the materials from the generator with no payment.~~

* * *

~~(45) Clothing; but clothing shall not include clothing accessories or equipment, protective equipment, or sport or recreational equipment.~~

~~(46) Tangible personal property to be incorporated into:~~

~~(A) a net metering system as defined in 30 V.S.A. § 219a;~~

~~(B) a home or business energy system on a premises not connected to the electric distribution system of a utility regulated under Title 30 and that otherwise meets the requirements of 30 V.S.A. § 219a(a)(3)(A), (C), (D), and (E); or~~

~~(C) a hot water heating system that converts solar energy into thermal energy used to heat water, but limited to that property directly necessary for and used to capture, convert, or store solar energy for this purpose.~~

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(48) Health care services and educational services.

Sec. 6. 32 V.S.A. § 9742 is amended to read:

§ 9742. TRANSACTIONS NOT COVERED

This chapter shall not cover the following transactions:

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(8) ~~The sawing of lumber owned by the person requesting the sawing or his agent is not a "fabrication" within the meaning of subdivision 9771(3) of this title.~~

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Sec. 7. 32 V.S.A. § 9771 is amended to read:

§ 9771. IMPOSITION OF SALES TAX

(a) Except as otherwise provided in this chapter, there is imposed a tax on retail sales in this state. The tax shall be paid at the rate of ~~six~~ four and one-half percent of the sales price charged for but in no case shall any one transaction be taxed under more than one of the following:

* * *

(9) Services sold to a consumer.

(b) For the purposes of subdivision (a)(9) of this section, the sale of a service is considered to be in the state if the service was performed wholly in the state, or the greater portion of the service was performed in the state based on the proportion of the cost of performance of the service to the consumer. Notwithstanding the foregoing, in determining whether a service took place within the state, it is presumed that a service directly related to real property takes place where the real property is located, and that a service represented by tangible personal property takes place where the tangible personal property is received by the purchaser.

Sec. 8. 32 V.S.A. § 9773 is amended to read:

§ 9773. IMPOSITION OF COMPENSATING USE TAX

Unless property ~~has~~ or services have already been or will be subject to the sales tax under this chapter, there is imposed on every person a use tax at the rate of ~~six~~ four and one-half percent for the use within this state, except as otherwise exempted under this chapter:

(1) Of any tangible personal property purchased at retail;

(2) Of any tangible personal property manufactured, processed or assembled by the user, if items of the same kind of tangible personal property are offered for sale by him or her in the regular course of business, but the mere storage, keeping, retention or withdrawal from storage of tangible personal property or the use for demonstrational or instructional purposes of tangible personal property by the person who manufactured, processed or assembled such property shall not be deemed a taxable use by him or her; and for purposes of this section only, the sale of electrical power generated by the taxpayer shall not be considered a sale by him or her in the regular course of business if at least 60 percent of the electrical power generated annually by the taxpayer is used by the taxpayer in his or her trade or business;

(3) Of any tangible personal property, however acquired, where not acquired for purposes of resale, upon which any taxable services described in subdivision 9771(3) of this title have been performed; ~~and~~

(4) ~~Specified~~ Of specified digital products transferred electronically to an end user; and

(5) Of services sold to a customer at retail.

Sec. 9. 32 V.S.A. § 9774 is amended to read:

§ 9774. RULES FOR COMPUTING COMPENSATING USE TAX

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(e) If the sale of a service occurred outside the state because the greater proportion of the service was performed outside the state based on the costs of performance and the service was used inside the state, a tax is imposed under section 9773 of this title on the use of the service in the state.

Sec. 10. EFFECTIVE DATE

This act shall take effect on January 1, 2012.